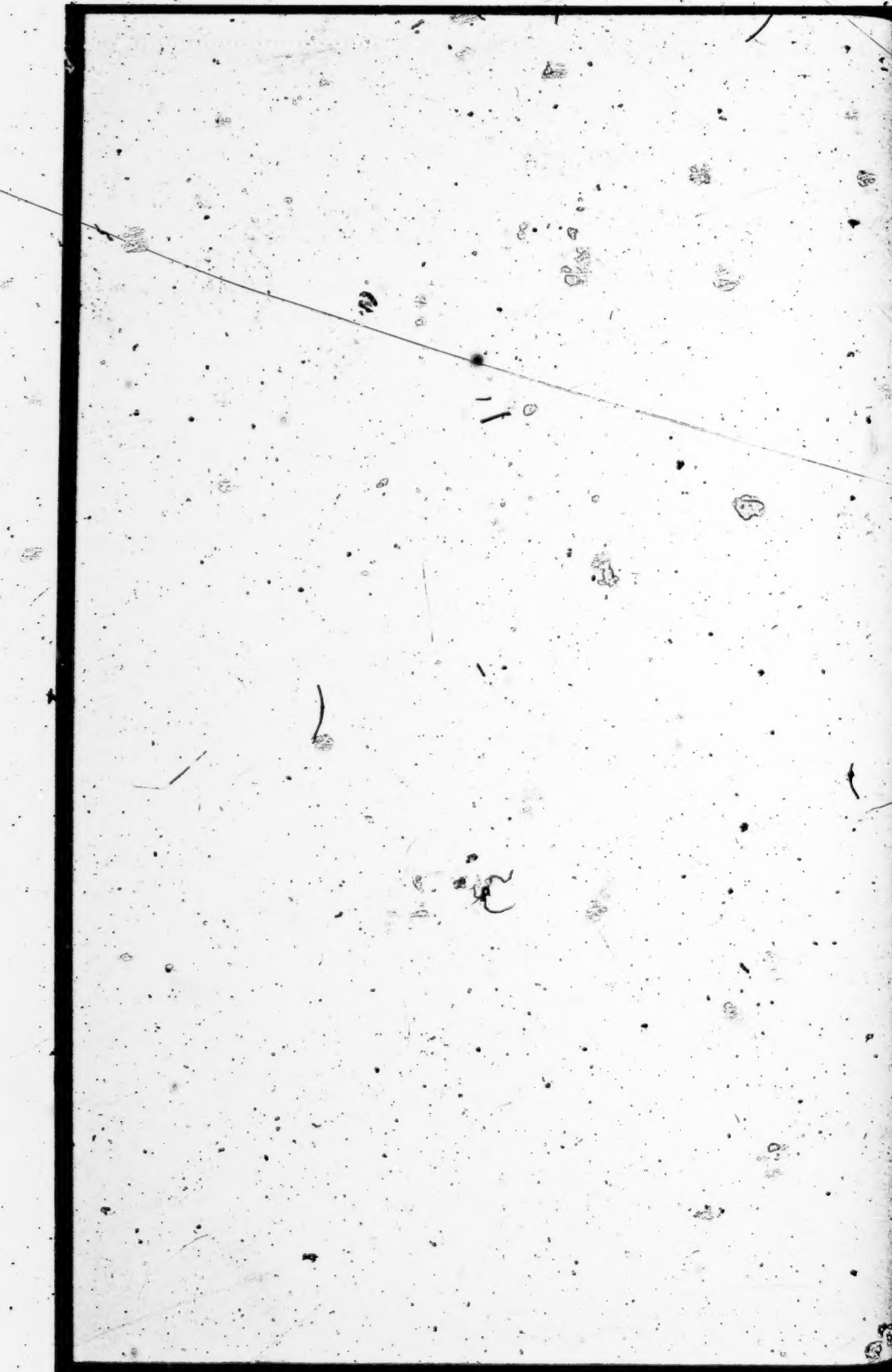

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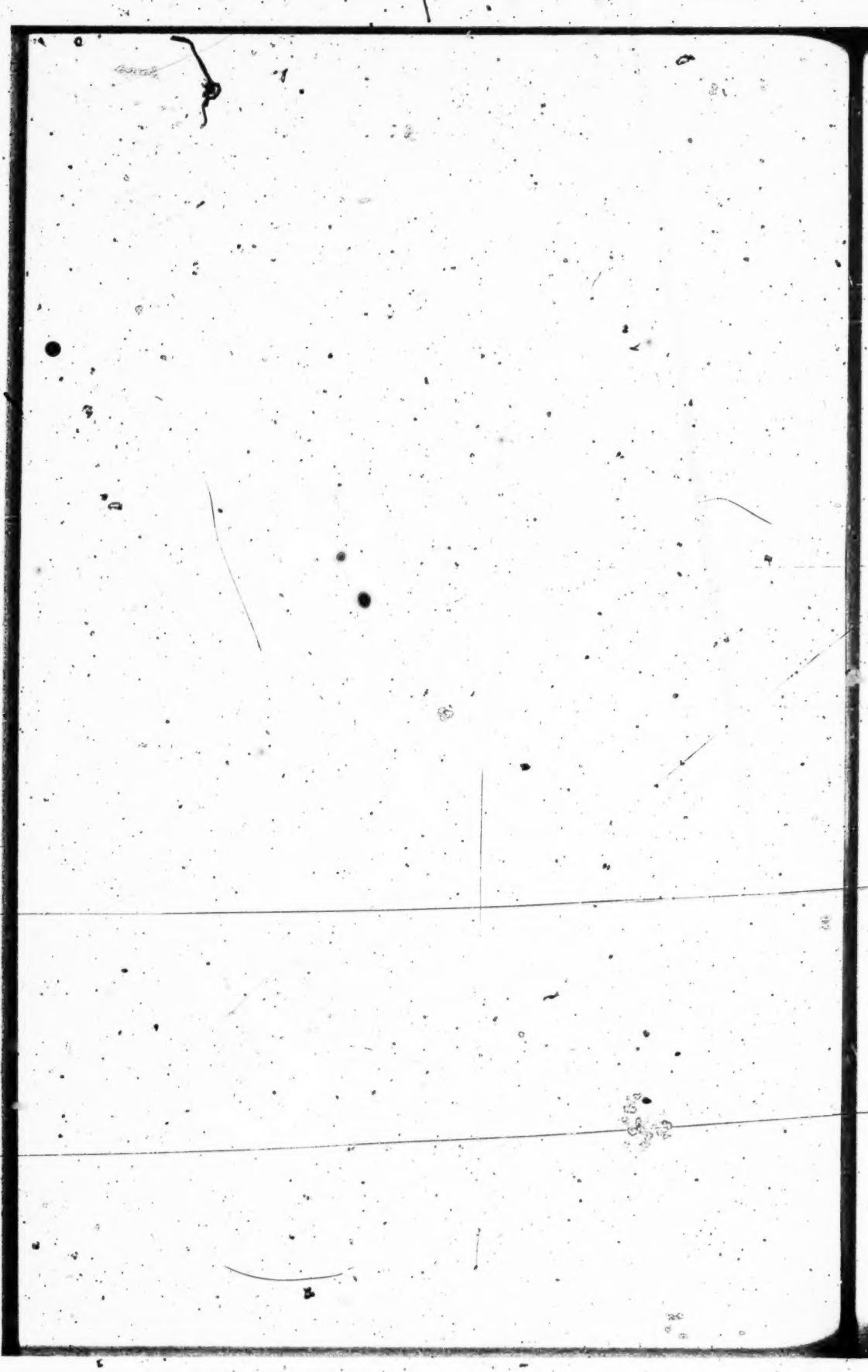

IN THE

# Supreme Court of the United States

## OCTOBER TERM, 1933.

KEYSTONE DRILLER COMPANY,
Petitioner,
vs.
GENERAL EXCAVATOR COMPANY,
Respondent.
No. 34.

KEYSTONE DRILLER COMPANY,
Petitioner,
vs.
GENERAL EXCAVATOR COMPANY,
Respondent.
No. 35.

KEYSTONE DRILLER COMPANY,
Petitioner,
vs.
THE OSGOOD COMPANY,
Respondent.
No. 36.

KEYSTONE DRILLER COMPANY,
Petitioner,
vs.
THE OSGOOD COMPANY,
Respondent.
No. 37.

## REPLY BRIEF IN SUPPORT OF MOTION TO RECALL AND CORRECT MANDATES.

**Status:** The decrees of the Circuit Court of Appeals were suspended by that Court and never issued as mandates to the District Court for the Northern District of

Ohio. The only mandates which have issued to the District Court were those mandates issued by this Court on January 5, 1934. The mandates of this Court were received by the District Court on or about January 9, 1934.

No decrees have been entered by the District Court. The entry of such decrees is being postponed pending decision of the Court of Appeals upon a petition for mandates as to costs in that Court.

**The Motion to Recall and Correct the Mandates should be granted for the following reasons:**

This motion cannot be classed as a petition for rehearing as suggested by the petitioner. It is brought within the same term in which the mandates have been issued by this Court. The decrees have not been entered by the District Court. Every appellate tribunal has power to recall and correct its mandates to conform to what was actually decided. A motion for recall and correction is the proper procedure.

Bank of Commerce, et al. v. State of Tennessee, 163 U. S. 416, 41 L. Ed. 211.

United States v. Reading Company, et al., 228 U. S. 158, 57 L. Ed. 779.

The case of Gantly v. Ewing, 3 How. 707, 717, 11 L. Ed. 794, 798, has no relation whatever to this situation. A request for recall and correction of mandates is not an act directly prohibited. It is an act that is directly permitted and an act long approved by the decision of this Court as the proper procedure when the circumstances warrant it.

A suggestion is made that, because the concluding paragraph of the respondents' brief before this Court requested that the decrees of the Circuit Court of Appeals should be affirmed, these respondents are now precluded from asking for a correction of the mandates of this Court. It is clear, however, that this single sentence in respondents' brief cannot bar respondents from obtaining a proper correction of a mistake in the mandates. The briefs before this Court show that respondents were asking for an affirmance of the decision of the Court of Appeals as a whole. The decrees of the Court of Appeals cannot be detached from the Opinions upon which they are supposed to be founded. This Court has many times held that decrees are to be construed in connection with the Opinions and the record for the purpose of carrying into effect the actual decision of the Court.

The Board of Supervisors v. J. W. Kennicott, et al., 94 U. S. 499, 24 L. Ed. 260.
Story v. Livingston, 13 Pet. 359, 10 L. Ed. 200.

The case of Kosak v. United States, 54 F. (2d) 72, is not pertinent to the present situation. In that case, there was no mistake to correct. In the present case, a comparison of the Opinions of the Court of Appeals and the Opinion of this Court with the mandates clearly shows that a mistake was made by the Clerk and that correction is needed.

The cases of The Stephen Morgan v. Good, 94 U. S. 599, 24 L. Ed. 266, and Hubbard v. Tod, 171 U. S. 474,

494, 43 L. Ed. 246, 253, are not pertinent to this situation. The fact that respondents did not apply for writ of certiorari certainly has no bearing upon respondents' right to move for recall and correction of the mandates which fail to conform with what was actually decided as shown by the Opinions of the Court of Appeals and this Court.

The case of Conley v. United States, 59 F. (2d) 929, 936, does not bear upon the present situation. Whether or not the Court of Appeals had discretion in this matter is not at issue. The point is that the mandates do not conform to what was actually decided and the question of discretion or abuse of discretion can have no bearing upon this point.

## CONCLUSION.

It is respectfully submitted that the motion to recall and correct the mandates should be granted.

Respectfully submitted,

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